

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

OLD REPUBLIC INSURANCE CO.,
Plaintiff/Counter-Defendant

v.

**LUMBERMENS MUTUAL
CASUALTY COMPANY,**
Defendant/Counter-Plaintiff

And

**THE VENATOR GROUP, INC. and FOOT
LOCKER , INC.,**
Defendant

CV 02-5145

**The Honorable
Cynthia Rufe**

ORDER

AND NOW, this _____ day of _____, 2003, upon consideration of Plaintiff's Motion for Summary Judgment and any opposition thereto, it is hereby **ORDERED** and **DECREED** that Plaintiff's Motion for Summary Judgment is **GRANTED**. It is further;

Found as a fact that The Venator Group, Inc. and/or Foot Locker, Inc. were not "using" Ryder Transportation Services' tractor and trailer when Mr. Ricchiuti was injured so as to qualify for coverage under Old Republic Insurance Company policy #Z35726-10 for the claims of the Ricchiutis. It is further;

DECLARED that The Venator Group, Inc. and/or Foot Locker, Inc. were insured under a Commercial General Liability policy #5AA 045 319-00 issued by Lumbermens Mutual Casualty Company for the acts of The Venator Group, Inc. and/or Foot Locker, Inc. alleged in Ricchiuti v. The Venator Group, Inc., civil number 99-1976. Under policy #5AA 045 319-00 The Venator Group, Inc. and/or Foot Locker, Inc. had a Self Insured Retention of One Hundred Fifty Thousand Dollars (\$150,000.00). A settlement was reached in Ricchiuti v. The Venator Group, Inc., civil number 99-1976 which did not exceed The Venator Group, Inc. and/or Foot Locker, Inc. Self Insured Retention amount under policy #5AA 045 319-00. It is further;

ORDERED The Venator Group, Inc. and/or Foot Locker, Inc. is obligated to reimburse Old Republic the monies Old Republic expended for the settlement and defense of Ricchiuti v. The Venator Group, Inc., civil number 99-1976. It is further;

ORDERED that the only triable issue remaining between Old Republic Insurance Company and The Venator Group, Inc. and/or Foot Locker, Inc. is the amount of damages for settlement amount and defenses costs incurred by Plaintiff in Ricchiuti v. The Venator Group, Inc.

BY THE COURT:

**The Honorable Cynthia Rufe
United States District Judge**

McCANDLESS LAW ASSOCIATES, P.C.

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Our File No: 20,948

Attorney for Plaintiff

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PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Pursuant to the Court's Order of September 30, 2003, Plaintiff, Old Republic Insurance Company, by and through its attorneys, McCandless Law Associates, hereby moves this Honorable Court to enter Summary Judgment in its favor against all Defendants. Plaintiff adopts and incorporates by reference its Motion for Summary Judgment and supporting Memorandum of Law (including all attached exhibits) filed against Lumbermens Mutual Casualty Company (Doc. #11) and its Motion for Summary Judgment and supporting Memorandum of Law (including all attached exhibits) filed against Footlocker, Inc., and The Venator Group, Inc. (Doc. #25) as if they were fully set forth at length herein.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant Plaintiff's Motion for Summary Judgment and enter an Order declaring that Foot Locker was not "using" Ryder's vehicle (use as contemplated in automobile liability policies) and accordingly is not covered under the Old Republic policy #Z35726-10 for any claim having arisen under the Ricchiuti litigation and that a hearing is to be held to determine the reasonableness of the amount of damages including, settlement amount and defenses costs incurred by Plaintiff in Ricchiuti v. The Venator Group, Inc.

Respectfully Submitted,

McCANDLESS LAW ASSOCIATES, P.C.

Edward L. McCandless
Attorney for Plaintiff

Dated: _____